NG CHOOI AW & ANOR

v.

ENG AH JAM & ANOR

HIGH COURT MALAYA, MUAR
AHMADI ASNAWI JC
[CIVIL APPEAL NO: 12-61-2004]
8 MAY 2008

CIVIL PROCEDURE: *Damages - Liability - Apportionment of 50% on account of contributory negligence - Whether conviction under s. 326 Penal Code proof of liability - Whether defence of contributory negligence applicable - Whether defence covers intentional and malicious conduct - Civil Law Act 1956, s. 12*

CRIMINAL LAW: *Penal Code - Section 326 - Voluntarily causing grievous hurt by dangerous weapons or means - Whether defence of contributory negligence available - Whether defence covers intentional and malicious conduct - Civil Law Act 1956, s. 12*

The appellants and the respondents were neighbours in a housing estate. The 1st appellant was on her daily jogging routine when she was barked at and chased by the dogs owned by the 1st respondent as she passed by the latter's house. Angered by the incident, she told the 1st respondent to tie up the dogs with the following words "... rich people don't be arrogant and do so much evil, be careful of retribution ..." ('the said words'). With that she continued with her jogging. Upon her jog back to her house, the 1st respondent assaulted her with a stick. The 2nd respondent also jointly assaulted the 1st appellant. The 1st appellant's husband ('SP5'), on seeing what was happening, ordered them to stop and threatened to call the police but he was ignored. It was only when the 1st appellant's son, the 2nd appellant, rushed to help his mother that the respondents eventually stopped and retreated. The 1st appellant subsequently lodged a police report that brought the case to the sessions court wherein the respondents pleaded guilty to a charge of causing grievous hurt under s. 326 of the Penal Code. The learned judge apportioned liability of the parties at 50% each on account of contributory negligence on the part of the 1st appellant. The 1st appellant's claim for exemplary damages, aggravated damages and psychological injury were not allowed. Additionally, the learned judge allowed the respondents' counter-claim for damages

apportioned at 50% each. Hence, the appellants' appeal. The respondents submitted that the 1st appellant had in fact abused them and harboured unhappiness over the fact that SP5 had given a discount of RM1,800 to the 1st respondent over some renovation work done at the 1st respondent's house. Also, that the 1st appellant had pushed the 2nd respondent after uttering the said words and ordered the 2nd appellant to assault them which led the respondents to retaliate in self-defence.

Held (allowing the appeal):

(1) On the totality of the evidence, the said words uttered by the 1st appellant that sparked the fighting had no correlation at all with the discount given by SP5 to the 1st respondent. It was SP5's business decision over a matter that the 1st appellant was not privy to. The sum involved was only RM1,800. Therefore to suggest that the appellant became very angry over the discount and started a fight over the same was a little far fetched. (paras 12 & 13)

(2) The guilty pleas by the respondents over the criminal charge proffered against them and their unequivocal admissions of the facts leading to the commission of the crime lends credence to the testimonies of both the appellants rendering the appellants' version of the events highly probable. One's guilty plea is an admission which supports the plaintiff's case and which weighs against the defendant. In the present case, the respondents' guilty pleas and subsequent convictions apart from being admissible were *prima facie* proof of their liabilities. The learned judge clearly erred on a matter of law when she concluded that the respondents' guilty pleas could not be taken into account to determine the liabilities of the respondents. (para 14)

(3) The said words uttered by the 1st appellant were not provocative enough to justify the 1st respondent's assault on her. The said words were ordinary words and in the context under which they were uttered, they appeared to be more cautionary than humiliating. They did not appear insulting either. They were a reprimand to the 1st respondent for letting loose his dogs to the detriment of the public at large. Employing the reasonable man's test, in all the circumstances of the case, it could not offer a valid justification for the respondents to conduct themselves in the manner they conducted themselves against the 1st appellant. Even if the

words were latent enough to stir their banal instincts, it again offered no justification simply because the respondents' response far exceeded the proportionality of the hurt or injury done by the utterance of the said words. (paras 18 & 19)

(4) The respondents' response to the utterance of the said words was not spontaneous. It was premeditated. There was a gap between the utterance of the said words and the actual assault. The 1st respondent waited for the 1st appellant to return home knowing fully that she would use the same route. He armed himself with a piece of wood to inflict blows on a 50-year old woman. He prepared himself thoroughly to assault the 1st appellant. His wickedness and malicious intent was very apparent. (para 19)

(5) The plea of contributory negligence was not available to the respondents because assault did not constitute a fault under the Civil Law Act 1956. Contributory negligence is generally a defence to claims in tort arising out of the defendant's negligence. In contrast where the defendant's conduct amounts to malicious or intentional wrong as opposed to ordinary negligence the defence does not apply. All the more so in the present case where the assault was premeditated and the 1st respondent was hell bent to assault and inflict the injuries on the 1st appellant. It made no complete sense to entertain a case of contributory negligence on the part of the 1st appellant in such circumstances. (para 20)

(6) The appellants' claim for exemplary damages should not be allowed because it was not specifically pleaded. However, their claim for aggravated damages need not be specifically pleaded. It was sufficient for the 1st appellant to plead general damages to enable her to claim for aggravated damages. The learned judge had acted erroneously when she refused the 1st appellant's claim for aggravated damages. The 1st appellant suffered humiliation, loss of pride and self-esteem. She ought to be compensated for all that she had suffered. She should be paid RM15,000 as aggravated damages. (paras 30, 33 & 37)

(7) The 1st appellant's claim for psychological injury should also be allowed. There was evidence that the 1st appellant had suffered Post Traumatic Stress Disorder. Psychological injuries as with physical injuries must also be compensated even if the 1st appellant had fully recovered from the trauma. A sum of RM10,000 was adequate for that claim. (para 38)

Case(s) referred to:
Ansell v. Thomas [1974] Crim LR 31 ***(refd)***
Bohjaraj Kasinathan v. Nagarajan Verappan & Anor [2001] 4 CLJ 433 HC ***(refd)***
Choo Micheal v. Loh Shok Mow [1994] 1 SLR 584 ***(refd)***
Chu Kim Sing & Anor v. Abd Razak Amin [1999] 4 CLJ 448 HC ***(refd)***
Chung Hwa Ying v. Phang Mun Mooi & Anor [1986] 1 LNS 7 SC ***(refd)***
Leong Yin Leong (Suit No 1132 of 1999) [2002] Mallal's Digest 1132 ***(refd)***
Roshairee Abd Wahab v. Mejar Mustafa Omar & Ors [1997] 1 CLJ Supp 39 HC ***(refd)***
Sivalingam Periasamy v. Periasamy & Anor [1996] 4 CLJ 545 CA ***(refd)***
Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn Bhd [1995] 1 CLJ 15 FC ***(refd)***
Tan Kuan Yau v. Suhindrimani Angasamy [1985] 1 CLJ 429; [1985] CLJ (Rep) 323 FC ***(refd)***
Taw Too Sang lwn. Chew Chin Sai & Satu Lagi [2001] 5 CLJ 37 HC ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 12(1), (6)
Penal Code, s. 326

Other source(s) referred to:
Halsbury's Laws, vol 12(1), 4th edn Reissue, para 1115
The Supreme Court Practice, vol 1, para 18/8/7

For the appellants - Manian K Marappan; M/s Manian K Marappan & Co
For the respondents - Chandra Mohan; M/s Chandra Mohan & Partners

Reported by Usha Thiagarajah

JUDGMENT

Ahmadi Asnawi JC:

[1] This is an appeal lodged by the appellants/plaintiffs against the decision of the learned Sessions Court Judge handed down on 24 June 2004 whereby the liability of the parties herein were apportioned at 50% each on account of the contributory negligence she found on the part of the 1st appellant. The learned judge also refused the 1st appellant's claim for exemplary damages, aggravated damages and psychological injury. Additionally she also allowed both the respondent's counter-claim for damages, also apportioned at 50% each. The full purport of her judgment are as indicated in the Rekod Rayuan Tambahan.

[2] The facts leading to this action are as follows: A

[3] Both the appellants and the respondents were immediate neighbours within the same housing estate. On the morning of 31 October 1999 the 1st appellant went jogging, her daily routine, along the road infront of her house. As she passed the B respondents' house, two dogs barked fiercely at her. Feeling a bit angry she told the owner (1st respondent) to tie up the dogs and told him "... rich people don't be arrogant and do so much evil, be careful of retribution ..." She then continued with her jogging. Since her house is at the dead end, she has to again pass the C respondents' house to go back home.

[4] It was on this trip back home that she noticed the 1st respondent standing near the pillar of his front gate, hiding something in his right hand and gesturing her to go to his house. D The 1st appellant however ignored him. Thereupon the 1st respondent suddenly rushed at her with a long piece of wood. She fled towards her house but the 1st respondent caught up with her and started to assault her with the piece of wood he had carried along. Soon after the 2nd respondent joined the 1st respondent E to also assault her with a piece of wood.

[5] The 1st appellant shouted for help and thereafter SP5, her husband came out of the house. On seeing his wife being assaulted infront of the gate of his house, he told the respondents to stop the assault and threatened to call the police. However this was F ignored by both respondents and both continued to assault the 1st appellant. Meanwhile, the 2nd appellant, the 1st appellant's son, who was upstairs also heard the commotion. He opened the window of his room and saw his mother being assaulted in front of the house. He rushed down armed with a piece of rattan. He G attacked both the respondents with the rattan to stop them from continuing assaulting his mother. Soon after both the respondents stopped the assault and retreated.

[6] As a result of the assault, the 1st appellant suffered injuries H to her hands while trying to ward off the blows to her head. The 2nd appellant also suffered injuries when the respondents delivered blows to his head.

[7] Pursuant to a police report lodged by the 1st appellant, both I the respondents were subsequently charged in Batu Pahat Sessions Court *vide* case number SBA 62-52-1999, for an offence under s. 326 of the Penal Code. On 13 March 2000 both pleaded

guilty to the charge and unequivocally admitted the facts leading to the commission of the crime as adduced by the prosecution. The facts as tendered are as indicated at p. 166 of the rekod rayuan. The facts were on all fours consistent with the testimony of the 1st appellant in this case.

[8] The pertinent issue arising in this appeal is this – can there be a finding of contributory negligence on the part of the 1st appellant in all the circumstances of the case? It was the submission of learned counsel for the respondents that there was on account of the provocative words uttered by the 1st appellant to the 1st respondent. He fortified his contention by citing s. 12(6) of the Civil Law Act 1956, whereby the conduct of the 1st appellant was caught within the phrase "or other act or commission".

[9] On the other hand learned counsel for the appellants argued that upon the facts alone, there could not be any contributory negligence on the part of the 1st appellant. The words uttered were not provocative and the respondents have pleaded guilty to a charge of causing grievous hurt under s. 326 of the Penal Code. It is thus not open to them to now plead contributory negligence under s. 12(1) of the Civil Law Act 1956. Additionally the word 'fault' under the section does not cover intentional and malicious conduct.

[10] Of course there were two versions of the incident. The version given by the respondents were that the fight took place in front of their house when the 1st appellant came over and started scolding and abusing them. SP5 had earlier on given a discount of RM1,800 to the 1st respondent over some renovation works on the windows of the 1st respondent's house undertaken by SP5. According to the 1st respondent, the 1st appellant was extremely unhappy over the discount given. After scolding and uttering the words "don't do so much evil and be careful with retribution", the 1st appellant pushed the 2nd respondent and thereafter ordered the 2nd appellant to bring the rattan and stick and started to beat them. In self defence both the respondents also picked up some sticks and retaliated. In the end all four suffered various kinds of injuries.

[11] Faced with two different versions about the same incident the trial court has a duty to evaluate and decide which of the two versions is to be accepted. In deciding so the trial judge should go upon the basis of considering which version is inherently

probable or improbable after taking into accout and evaluating all the available evidence rather than approaching the subject upon the basis of which of the two conflicting versions should be believed.

[12] On the totality of the evidence, in my view the words uttered by the 1st appellant that sparked the fighting has no correlation at all with the discount given by SP5 to the 1st respondent. One would wonder what is so evil about getting a discount and what is the retribution for getting a discount. The words uttered were a lot more consistent with an admonition over a mischief or an act or conduct which is frightening or reprehensible or despicable, giving rise to sudden fear, fright, shock or anger such as that experienced by the 1st appellant that morning when the 1st respondent's dogs started chasing and barking fiercely at her.

[13] Equally the discount given to the 1st respondent has nothing to do with her. It was her husband's business decision over a matter which the 1st appellant was not privy to. The sum involved was only RM1,800. Therefore to suggest that the 1st appellant became very angry over the discount and started a fight over the same is a little far fetched. It makes no complete sense.

[14] Additionally there are the guilty pleas by both the respondents over the criminal charge proffered against them and their unequivocal admissions of the facts leading to the commission of the crime as adduced by the prosecution. The importance of their admissions lies in the material consistency of the facts therein and the evidence given by both the appellants in this case. It lends credence to the testimonies of both the appellants rendering their version of the events highly probable. It is trite that one's guilty plea is an admissible admission which supports the plaintiff's case and which weighs against the defendant – see *Chu Kim Sing & Anor v. Abd Razak Amin* [1999] 4 CLJ 448. There is nothing to prevent the appellants from relying upon the respondents' pleas of guilty to advance their claim. Their guilty pleas and subsequent convictions, apart from being admissible in evidence are also *prima facie* proof of their liabilities (see *Choo Micheal v. Loh Shok Mow* [1994] 1 SLR 584. The learned trial judge in this case clearly erred on a matter of law when she concluded that the respondents' guilty pleas cannot be taken into account and not a criterion to determine the liabilities of the respondents.

[15] Having so decided that the appellants' version of the events is highly probable and having scrutinized the evidence in its totality, I accepted the appellants' version of the events. Consequent thereto it is my findings that:

- The attack and assault on the 1st Appellant was premeditated. The 1st Respondent waited for the 1st Appellant by the gate of his house knowing fully that the 1st Appellant would use the same route to return home.
- The 1st Respondent armed and prepared himself with a piece of wood to assault the 1st Appellant, revealing his real malicious intent.
- The 1st Appellant fled the scene upon seeing the 1st Respondent rushing towards her, armed with the piece of wood.
- The 1st Respondent caught up with the 1st Appellant at the gate of the 1st Appellant's house and started to beat her with the piece of wood he had carried along.
- Very soon after the 1st Respondent was joined by the 2nd Respondent in beating/assaulting the 1st Appellant, also with a piece of wood.
- Both the Respondents continued beating the 1st Appellant even after her husband, SP5, emerged from his house and shouted at them to stop the beatings/assault and threatening to summon the police.
- The beatings/assault only stopped after the 2nd Respondent came to the aid of his mother.
- The injuries sustained by the 1st Appellant on her hands were consistent with her evidence that she had used both her hands to cover and protect her head from the beatings. It is also consistent that the injuries were caused by a hard object such as the piece of wood the Respondents used to beat the 1st Appellant.
- The assault took place in front of the 1st Appellant's house as was corroborated by the SP5 and the 2nd Appellant. It could not be true that it took place at the Respondents' house as alleged by the Respondents.
- There was quite a bit of interval between the assault by the Respondents and the utterance of words by the 1st Appellant which the Respondents said were provocative.

[16] From the set of facts enumerated above it is my further findings that the 1st appellants did not start the fight/assault. The respondents were indeed the aggressors. The 1st appellant was a victim of the 1st respondent's aggression and violent behaviour, only to be joined later by the 2nd respondent. The 2nd appellant's conduct is justifiable. He joined the fray only to help his hapless mother from further beatings and further serious injuries. In such event the 1st and 2nd appellants shoulder no blame at all.

[17] Even without the aid of both the respondents' guilty pleas to a criminal charge arising from the same incident/facts, I have no hesitation to find that, on the evidence, both the respondents were wholly to be blamed and wholly liable for the injuries suffered by both the appellants. It is very apparent that the learned trial judge erred in the assessment of facts and the applicability of laws presented before her when she apportioned liability at 50% each on both the parties.

[18] Now, were the words uttered by the 1st appellant to the 1st respondent were such that it was so provocative that it offered an escape window to the 1st respondent to inflict what he has inflicted upon the 1st appellant? To my mind it is not. The words were very ordinary words and in the context under which it were uttered, it appears to be a lot more cautionary rather than humiliating. It did not appear insulting either. It was a reprimand to the 1st respondent for letting loose his dogs to the detriment of the public at large. Employing the reasonable man's test, in all the circumstances of the case it could not offer a valid justification for the respondents to conduct themselves in the manner they have conducted themselves against at the 1st appellant.

[19] Even if the words were latent enough to stir their banal instincts, it again offered no justification simply because the 1st respondent's response and later the 2nd respondent, far exceeded the proportionality of the hurt or injury done by the utterance of the said words. The 1st respondent's response was not spontaneous. It was premeditated. There was a gap between the utterance of the words and the actual assault. The 1st respondent waited for the 1st appellant to return home knowing fully that she would use the same route. He armed himself with a piece of wood, a lethal weapon depending upon how it is used and he did not hesitate to inflict those blows on an old woman. He prepared himself thoroughly to assault the 1st appellant. His wickedness and malicious intent is thus very apparent. There can be no justification

that his violent and malicious conduct and intent could be cushioned by the words uttered by the 1st appellant in all the circumstances of the case. The premeditated assault negates the notion that the assault was precipitated by the 1st appellant's provocation. With respect it is my view that the learned trial judge again failed to properly assess the weight to be attached to the words uttered by the 1st appellant when approaching the question of the liabilities of the contending parties herein. The said words could not amount to an invitation to fight as suggested by the learned trial judge.

[20] As reiterated earlier, learned counsel for the respondents relied also on contributory negligence to reduce the damages citing s. 12(6) of the Civil Law Act 1956, as the basis of the same. In this respect, I am with the learned counsel for the appellants' submission that the plea of contributory negligence is not available to the respondents because assault does not constitute a fault under the Act. Contributory negligence is generally a defence to claims in tort arising out of the negligence of the defendant. In contrast, where the defendant's conduct amounts to malicious or intentional wrong doing as opposed to ordinary negligence the defence does not apply. All the more so in this case where the assault on the 1st appellant was premeditated and the 1st respondent was hell bent to assault and inflict the injuries on to the 1st appellant. It makes no complete sense to entertain a case of contributory negligence on the part of the 1st appellant in such circumstances.

[21] The fact that the 1st appellant was involved in some wrong doing or provoking the respondents does not of itself provide the respondents with the defence, unless the respondents' conduct amounted to a defence recognised by law or it falls squarely within the ambit of s. 12(6) of the Civil Law Act 1956, in which in this case it does not.

[22] In this respect I find support in the case of *Taw Too Sang lwn. Chew Chin Sai & Satu Lagi* [2001] 5 CLJ 37, where the court opined:

> Dengan segala hormatnya mahkamah ini mendapati bahawa liabiliti tidak boleh dibahagikan diatas alasan plaintif telah menimbulkan kemarahan kepada defendan kedua melainkan tindakan yang telah dilakukan oleh defendan-defendan boleh diterima sebagai pembelaan disisi undang-undang ...

[23] It is trite law that the High Court in its appellate capacity could interfere with the trial court's findings of facts by reviewing and evaluating the evidence as a trial judge if the trial judge's findings of facts were not supported by the evidence or if the findings were based on a misdirection or misinterpretation of the facts or evidence adduced or that the findings were clearly wrong.

[24] In *Chung Hwa Ying v. Phang Mun Mooi & Anor* [1986] 1 LNS 7, the Supreme Court held that:

(1) In normal cases, the appellate court is reluctant to interfere with the judge's conclusion on the facts because as a trial judge he had the opportunity to see and hear the witnesses and is in a better position to weigh their evidence;

(2) In the present appeal, however the trial judge had failed to make proper use of his opportunity and has come to a wrong conclusion on the facts which in the circumstances necessitates the appellate court to interfere and prevent a miscarriage of justice;

[25] The Court of Appeal in *Sivalingam Periasamy v. Periasamy & Anor* [1996] 4 CLJ 545, held that:

> It is trite law that an appellate court will not readily interfere with the findings of fact arrived at by the trial Court to which the law entrusts the primary task of evaluation of the evidence. However, the appellate court has a duty to intervene where a trial court has so fundamentally misdirected itself that one may say that no reasonable court which had properly directed itself and asked the correct questions would have arrived at the same conclusion.

[26] In this appeal for the reasons enumerated in the preceding paragraphs, the findings over the apportionment of the liabilities of the respective parties herein by the learned trial judge clearly warrants an interference. It was premised upon an improper evaluation of the facts adduced and the wrong application of the relevant laws. Equally the findings were against the weight of the evidence. I therefore allowed the appeal of both the appellants on the issue of liability and find that the respondents were wholly liable for the injuries sustained by the appellants. On the same grounds I also allowed the appellants' appeal against the counter-claim. There is no evidentiary basis at all to allow the counter-claim made by both the respondents. Accordingly I set aside such part of the order of the court below in so far as it relates to the appellants' liability for contributory negligence and declare the respondents solely liable for the damages assessed. Likewise the same also applies to the counter-claim.

[27] I also allowed the appellants' appeal on quantum whereby the learned trial judged refused the appellants' prayers for exemplary damages, aggravated damages and psychological injury. The Supreme Court in *Tan Kuan Yau v. Suhindrimani Angasamy* [1985] 1 CLJ 429; [1985] CLJ (Rep) 323, laid down the principle under which an appellate court may interfere with the findings of the trial judge on the issue of quantum. Abdul Hamid CJ stated:

> ... the principle which should guide the court in determining whether it should interfere with the quantum of damages is crystal clear, much depend on the circumstances of each case, in particular the amount of the award. In a particular case therefore it is for the appeal court to consider whether in the light of the circumstances of the case there is an erroneous estimate of the amount of damages in that either there was an omission on the part of the Judge to consider some relevant materials or he had admitted for purposes of assessment some irrelevant considerations. If the court is satisfied or convinced that the Judge has acted upon wrong principle of law then it is justified in reversing: indeed it is its duty to reverse the finding of the trial judge.

[28] Meanwhile the Federal Court in *Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn Bhd* [1995] 1 CLJ 15 held:

> ... The two situations in which an appellate court would be justified in interfering by reassessment of damages would be when the trial judge has acted on a wrong principle or had made an entirely erroneous estimate of the damages. In this case the judge's basis of assessment could not be supported in law ... .

[29] Turning now to the present appeal, it appears that the appellant has no complaints relating to the awards under the head of general and special damages. The awards given by the learned trial judge were not challenged. Therefore it remained as it were.

[30] As regards, to the appellants' claim for exemplary damages I refused the same primarily on the grounds that the said claim was not specifically pleaded by the appellants in their statement of claim. *The Supreme Court Practice (Vol. 1),* para 18/8/7 provides:

> A claim for exemplary damages must be specifically pleaded, together with the facts relied on, (see para (3)) negativing the contrary ruling of the Court of Appeal in *Broome v. Cassell & Co. Ltd* [1971] 2 QB 354 and restoring [1971] 1 All ER 262 (Lawton J). Paragraph (3) has the effect of requiring that:

(1) the claim for exemplary damages be specifically pleaded in the body of the Statement of Claim (or counterclaim), not merely in the prayer and in addition to any other claim for damages.

(2) the facts on which the party relies to support his claim for exemplary damages be pleaded with proper particularity.

[31] Additionally, *Halsbury's Laws* (vol. 12(1) 4th edn Reissue), para 1115 provides:

> Exemplary damages are damages which are awarded to punish the defendant and indicate the strength of the law. They may be awarded only in actions for tort, and only in 3 categories of cases.
>
> The first category is oppressive, arbitrary or unconstitutional action by servants of the government ...
>
> The second category is cases in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff ...
>
> The third category is cases where exemplary damages are expressly authorised by statute ...

[32] I am satisfied that the claim by both the appellants does not fall under any one of the three categories permitted above.

[33] I allowed the 1st appellants claim for aggravated damages. In this respect I rejected the respondent's submission that the claim under this head was not properly pleaded by the 1st appellant. I am satisfied on the authorities that it was sufficient for the 1st appellant to plead "general damages" in her statement of claim to enable her to claim aggravated damages – see *Bohjaraj Kasinathan v. Nagarajan Verappan & Anor* [2001] 4 CLJ 433. It is trite law that aggravated damages are part of general damages and thus need not be specifically pleaded. In *Ansell v. Thomas* [1974] Crim LR 31, Edmund Davies LJ held that aggravated damages is to compensate the plaintiff for injuries affecting his feelings arising out of the tortious acts of the defendants and in assessing this, all circumstances of the case must be taken into account, including the character of the plaintiff. In *Broome v. Cassel & Co (supra)*, Lord Diplock described aggravated damages as ... "compensation for the injured feelings of the plaintiff where his sense of injury resulting from wrongful physical act is justifiably heightened by the manner in which or motive for which the defendant did it ..."

[34] In the appeal presently before me, the 1st appellant's claim for aggravated damages was dismissed by the learned trial judge because in her view she caused a provocation by the words uttered by her. However, as enumerated earlier there was no provocation occasioned by her words. She was almost 50 years old at the time of the incident. She was repeatedly assaulted infront of her husband and son on a public road. There is no reason at all for the assault. It took the intervention of her son to stop the assault. The respondents had planned the assault and assaulted the 1st appellant with intention to cause hurt to her and indeed she was injured. There is no remorse on the assailants' part. They have been neighbours for quite a while and yet, they have never offered an apology or compensation to both the appellants although they knew very well that they have done a wrong on the appellants, as can be seen by their guilty pleas to the criminal charge. The appellants even wrote to the High Court Judge to review the sentence imposed by the Batu Pahat Sessions Court upon the respondents on the grounds that the sentence passed was inadequate and this requests was obliged by the High Court Judge where the amount of fine was increased to almost double. In para. 10 of her statement of claim she pleaded that the respondents had intentionally assaulted her with spite and the assault was designed to embarrass her infront of her husband, her son, neighbours and public at large, causing public contempt and odium, thereby aggravating her injuries. There can be no doubt that equally her feelings were injured, self respect dented and self esteem took a tumbling.

[35] For the reasons given I am firmly of the view that the learned trial judge had acted erroneously when she misdirected herself in law and in fact in her assessment of the damages when she refused the 1st appellant's claim for aggravated damages. The authorities enumerated earlier clearly suggested otherwise. Additionally, in *Roshairee Abd Wahab v. Mejar Mustafa Omar & Ors* [1997] 1 CLJ Supp 39, the court opined:

> In the opinion of this court, the plaintiff may at the material time be weaker, less experienced and lower in rank to the first and second defendants, but he was entitled, as all young officers do, to self respect and dignity. By the acts of the first and second defendants, he has suffered humiliation, loss of pride and self esteem ... To compensate for the injury to his feelings, this court awards a sum of RM50,000.00 as aggravated damages.

[36] In *Bohjaraj Kasinathan v. Nagarajan Verappan & Anor* [2001] 4 CLJ 433, the court decided:

> ... I am also of the opinion that the plaintiff is entitled to aggravated damages. The plaintiff, although not holding any high post with high salary, was the chairman of the local temple committee at the time of the incident ... Thus he was entitled to self respect and dignity. By the acts of the first defendant, the plaintiff suffered humiliation, loss of pride and self esteem.

[37] Likewise the 1st appellant here, like any other human being was entitled to self respect and dignity though she was employed as a clerk somewhere. By the acts of the respondents, the 1st appellant had suffered humiliation, loss of pride and self esteem. She ought to be compensated for all that she had suffered. Taking into account all the relevant factors I ordered that she be paid a sum of RM15,000 as aggravated damages.

[38] I also allowed the 1st appellant's claim for psychological injury. The learned trial judge rejected the claim under this head because she was of the view that it was not serious and the 1st appellant has fully recovered. SP6, the psychiatrist who examined and treated the 1st appellant after the assault gave evidence that the 1st appellant had suffered from Post Traumatic Stress Disorder. His full report is at p. 151 of the appeal record. I agree with the submission that psychological injuries as with physical injuries must also be compensated even if the 1st appellant had fully recovered from the trauma if there are evidence to that effect. In this appeal, SP6's testimony was not challenged. In *Leong Yin Leong (Suit No. 1132 of 1999)* [2002] Mallal's Digest 1132, the plaintiff was awarded a sum of RM35,000 for Post Traumatic Stress Disorder similar to the injury suffered by the 1st appellant. However, in this case I am of the view that a sum of RM10,000 for the psychological injury suffered by the 1st appellant is adequate.

[39] I also allowed cost of this appeal and in the court below to the appellants.